

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5 : 08 - CR - 252 - 1F

UNITED STATES OF AMERICA,

v.

CHARLES NEWBY,

Defendant.

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ORDER

Charles Newby's May 2, 2011 Motion for Reconsideration [DE-45] of this court's denial of his Motion to Reduce Sentence [DE-42] is DENIED. Because Newby was not sentenced until April 1, 2009, the effect of the retroactive crack amendment to USSG § 2D1.1(c)(3) already was incorporated into the calculation of his recommended advisory guideline range.

Pursuant to USSG § 2D1.1(c)(3), base offense level 34 applies if the quantity of cocaine base is determined to be at least 500 grams but not more than 1.5 kilograms. The court determined that Newby was responsible for 595.98 grams of cocaine base (crack). His base offense level of 34 was, and remains, correct under the law and the advisory USSG applicable to him and his specific case. Nevertheless, in honoring the Government's motion on Newby's behalf, the court sentenced Newby *below* his properly-calculated advisory guideline range.

SO ORDERED.

This the 4th day of May, 2011.



JAMES C. FOX
Senior United States District Judge